IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 26113 of 2003(H)

PETITIONER:

D.VIVEKANANDAN, PROP.SREENIVASA MATCH
WORKS, KUTHANPALLY-680 594.

BY ADV. SRI.A.K.CHINNAN
SMT.SUSAL A. CHINNAN

RESPONDENTS:
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1. ADDITIONAL SALES TAX OFFICER,
WADAKANCHERRY-680 594

2. DEPUTY COMMISSIONER, COMMERCIAL TAX,
THRISSUR.

3. COMMISSIONER, COMMERCIAL TAXES KERALA,
THIRUVANANTHAPURAM.

4. DISTRICT COLLECTOR, REVENUE RECOVERY
CIVIL LINES, THRISSUR - 680 003.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.7.12.99 OF THE ADDL. SALES TAX OFFICER, WADAKKANCHERRY.

P2: TRUE COPY OF ORDER DT.7.12.99 OF THE ADDL. SALES TAX OFFICER, WADAKKANCHERRY.

P3: TRUE COPY OF PRESCRIPTION DT.7.3.2001 OF THE PERUMDURAI MEDICAL COLLEGE, PERUMDURAI.

P4: TRUE COPY OF REVISIONAL COMMON ORDER OF THE DEPUTY COMMISSIONER DT.27.9.2001.

P5: TRUE COPY OF CERTIFICATE DT.6.7.2002 OF THE SALES TAX OFFICER, WADAKKANCHERRY.

P6: TRUE COPY OF ORDER DT.27.12.2002 OF THE COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.26113 of 2003

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Dated this the 15th day of November, 2007.

JUDGMENT

Heard counsel for the petitioner and Government Pleader. The petitioner is challenging Exts.P1 and P2 orders of penalty issued under Section 45A of the KGST Act and confirmed by Exts.P4 and P6 orders in revision at two levels. Counsel for the petitioner contended that levy of penalty is absolutely arbitrary and unjustified. Main argument advanced by him is that the officer has not determined the tax evaded and penalty is not based on any evasion of tax found by the department. Government Pleader submitted that orders are based on data collected on inspection conducted during the relevant years namely, 1998-99 and 1999-2000. I find force in the contention of the petitioner that the officer has not determined the tax, if any, evaded by the petitioner. However, it is seen that the petitioner has not filed the return and even collected tax was withheld by the petitioner. Assessment orders are not produced in court and therefore, it is not known whether turnover in excess of the returned figures were assessed. It is seen from Ext.P5 that petitioner has remitted the collected tax for 1999-2000, though with delay. The Commissioner has also entered a finding that

petitioner has paid the tax. Counsel for the petitioner contended that petitioner was continuously sick and that is the reason why collected tax could not be remitted in time. It is seen that during inspection the officer found bills raised for sales made interstate for a turnover of Rs.8,90,914.32. This apparently shows that petitioner had accounted sales and sale bills are maintained in the business premises. So far as the CST collection is concerned, the violation is only delay in filing of return and payment of tax. Having regard to these circumstances, I find penalty levied is on the high side. In the circumstances, I dispose of the W.P. modifying Exts.P1 and P2 as confirmed by Ext.P6 by reducing the penalty for 1998-99 to rupees ten thousand and for 1999-2000 to rupees twenty five thousand. Counsel for the petitioner stated that petitioner has paid Rs.35,000/- pursuant to interim order of stay of this court dated 14.8.2003. If payment is made, adjustment of penalty so paid will be made as above and the matter will stand closed. However, if payment is not made, the above amount should be recovered from the petitioner with interest.

W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms